

had, therefore, a right to presuppose it in their interrogatory; but their object was to prove the early period of this knowledge. The testimony of these officers is from their own knowledge, and I can see no liability to the bank which would make them interested witnesses.

It seems to me to have been the duty of Wayman, undertaking to act upon his own responsibility in receiving any property, either in payment of the amount due to the trust fund by Jones, in consequence of this transfer, or as security for its payment, to have put the transaction in such a position that its character might be easily understood, and that any bad consequences flowing from its obscurity ought to fall upon him, and that the *cestui que trusts* have a right to give it in that case either character, as it may be most advantageous to them.

It is stated by Wayman, in his answer to the first petition of Jones and wife, in explanation of the transfers of stock to him, that he, as trustee, had, about June, 1830, purchased from Jones, stock of the Farmers and Mechanics Bank to the amount of \$850, which purchase was sanctioned by the Chancellor, and that he had subsequently purchased of Jones ten shares more, in the whole, twenty-seven shares, amounting to \$1370, which, he believed, had been transferred, but that Jones neglected to make the transfer, and that the transfer to him by Anne Jones, the administratrix, of thirty-four shares of that stock, as well as the deposit of \$1040 in the Savings Institution, was intended to secure the trust fund from any loss in consequence of the said neglect, and that it could not have been on account of the stock abstracted from the Farmers and Mechanics Bank of Frederick, because he was then ignorant that the stock had been so abstracted.

So much of this statement as relates to the \$850 seems to be correct. It appears from the proceedings that the purchase was authorized, and was treated as having been made, though as the Auditor remarks, it would seem from Jones' letter as indefinite as it is, that the transfer had been made, but it does not appear that that stock ever constituted a part of the trust fund, and if such transfer had been made about that time, it might